



Michael O. Leavitt  
Governor  
Scott Hirschi  
Director

# State of Utah

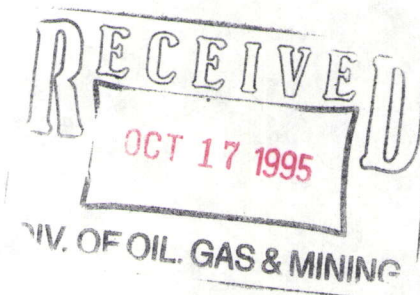
School and Institutional  
TRUST LANDS ADMINISTRATION

355 West North Temple  
3 Triad Center, Suite 400  
Salt Lake City, Utah 84180-1204  
801-538-5508  
801-355-0922 (Fax)

October 17, 1995

Mr. Ted Carter  
P.O. Box 52  
Minersville, Utah 84752

Mr. Dewey Cammack  
P.O. Box 1563  
Cedar City, Utah 84721



Re: ML 46285/Surface Access Issues in Section 16, T. 31 S., R. 15 W.

Gentlemen:

From our conversations yesterday, it appears that some dispute has arisen between you concerning Mr. Carter's rights as mineral lessee of the above-referenced state mineral lease to access the surface of the subject land, which is owned by Mr. Cammack. The purpose of this letter is to inform both of you of the legal "ground rules" for surface access, in hopes that you can resolve this matter amicably without the further involvement of this agency.

I have enclosed a copy of Utah Code Ann. section 53C-2-409, which governs surface access by mineral lessees. Under this statute, the mineral lessee has the right at all times to enter upon the surface for mining purposes, and shall have reasonable use of the surface. At the same time, the mineral lessee is liable to the surface owner for all damages to the surface and improvements, except for reasonable use.

Before the mineral lessee may go on the surface, he must have the permission of the surface owner, and have reached agreement with the surface owner as to the amount of surface damages (if any) to be paid. If the parties cannot reach agreement, the Director of this agency will set the amount of a bond to be filed by the mineral lessee in favor of the surface owner prior to entering the property. This bond will be separate from the lease bond currently on file with the agency.

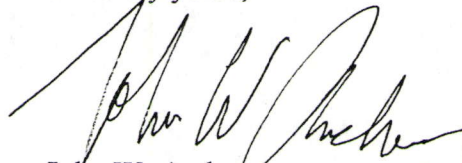
The Trust Lands Administration encourages you to work together to reach agreement as to the amount of surface damages, if any. If you cannot reach agreement within sixty days, please let me know and the Trust Lands Administration will determine the amount of a surface access bond.



Messrs. Carter & Cammack  
October 17, 1995  
Page 2

If I can be of further assistance, please let me know.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John W. Andrews", written in a cursive style.

John W. Andrews  
Attorney

Enclosure

cc: David T. Terry  
Jim Cooper  
John T. Blake  
Will Stokes  
Wayne Hedberg, DOGM

(b) The director may set a minimum bid for a public auction.

(5) The director may award a mineral lease without following the competitive bidding procedures specified in Subsections (3) and (4) or conducting an oral public auction, if the mineral lessee waives or relinquishes to the trust a prior mining claim, mineral lease, or other right which in the opinion of the director might otherwise:

(a) defeat or encumber the selection of newly acquired land, either for indemnity or other purposes, or the acquisition by the trust of any land; or  
(b) cloud the title to any of those lands.

(6) Following the awarding of a lease to a successful bidder, deposits, except filing fees, made by unsuccessful bidders shall be returned to those bidders.

(7) (a) Lands acquired through exchange or indemnity selection from the federal government shall be subject to the vested rights of unpatented mining claimants under the Mining Law of 1872, as amended, and other federal vested rights, both surface and minerals.  
(b) Subsection (7)(a) does not prevent the director from negotiating the accommodation of vested rights through any method acceptable to the parties.

(8) The director may lease lands in the order in which applications are filed if:

(a) the director offers trust lands for lease for mineral purposes according to the procedures in Subsections (3) through (6) and the lands are not leased; or

(b) a period of time of not less than one year but less than three years has elapsed following:

(i) a revocation of a withdrawal; or  
(ii) the date an existing mineral lease is canceled, relinquished, surrendered, or terminated.

History: C. 1953, 53C-2-407, enacted by L. Effective Dates. — Laws 1994, ch. 294, 1994, ch. 294, § 32. § 111 makes the act effective on July 1, 1994.  
Federal Law. — The Mining Law of 1872, cited in Subsection (7)(a), is 30 U.S.C. § 22 et seq.

### 53C-2-408. Mineral lease covenants.

Each mineral lease shall contain the following covenants:

(1) the lessee shall promptly pay any rent annually in advance;

(2) waste may not be committed on the land;

(3) the premises shall be surrendered at the expiration of the term;

(4) the lessee may not assign or sublet without the prior written authorization of the director; and

(5) if authorized improvements have been placed on the land by any person other than the lessee, the lessee shall allow the owner of the improvements to remove them within 90 days.

History: C. 1953, 53C-2-408, enacted by L. Effective Dates. — Laws 1994, ch. 294, 1994, ch. 294, § 33. § 111 makes the act effective on July 1, 1994.

### 53C-2-409. Mineral leases — Cancellation — Use of surface land — Liability for damage.

(1) Upon violation by the lessee of any lawful provision in a mineral lease, the director may cancel the lease after 30 days notice by registered or certified

return receipt mail unless the lessee remedies the violation, rectifies the condition, or requests a hearing within the 30 days or within any extension of time the director grants.

(2) (a) A mineral lessee, subject to conditions required by the director, has the right at all times to enter upon the leasehold for prospecting, exploring, developing, and producing minerals and shall have reasonable use of the surface.  
(b) The lessee may not injure, damage, or destroy the improvements of the surface owner or lessee.

(c) The lessee is liable to the surface owner or lessee for all damage to the surface of the land and improvements, except for reasonable use.

(3) Any mineral lessee may occupy as much of the surface of the leased land as may be required for all purposes reasonably incident to the exercise of lessee's rights under the lease by:

(a) securing the written consent or waiver of the surface owner or lessee;

(b) payment for the damage to the surface of the land and improvements to the surface owner or lessee where there is agreement as to the amount of the damage; or

(c) upon the execution of a good and sufficient bond to the director for the use and benefit of the surface owner or lessee of the land to secure the payment of damages as may be determined and fixed by agreement or in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties of the bond. The bond shall be in a form and amount as prescribed by the director and shall be filed with the administration.

History: C. 1953, 53C-2-408, enacted by L. Effective Dates. — Laws 1994, ch. 294, 1994, ch. 294, § 34. § 111 makes the act effective on July 1, 1994.

### 53C-2-410. Shut-in gas wells.

(1) Under a mineral lease for oil and gas, gas is considered to be produced in paying quantities from a shut-in gas well if the shut-in gas well is capable of producing gas in paying quantities, but the gas cannot be marketed at a reasonable price due to existing marketing or transportation conditions.

(2) (a) The director shall make rules establishing:

(i) a minimum rental or minimum royalty for a shut-in gas well that is considered to be producing gas in paying quantities; and

(ii) the basis upon which the minimum rental or minimum royalty shall be paid.

(b) The minimum rental or minimum royalty may not be less than twice the annual lease rental.

History: C. 1953, 53C-2-410, enacted by L. Effective Dates. — Laws 1994, ch. 294, 1994, ch. 294, § 35. § 111 makes the act effective on July 1, 1994.

### 53C-2-411. Unitization of mineral leases.

(1) Mineral lessees, upon prior written authorization from the director, may commit leased trust lands to unit, cooperative, or other plans of development with other lands.